



Comptroller General
of the United States

Washington, D.C. 20548

K. Riback

Decision

Matter of: Nova Group, Inc.

File: B-245106

Date: December 17, 1991

Carole L. Bionda, Esq., for the protester.
Lester Edelman, Esq., and Mary Byers, Esq., Department of the Army, for the agency.
Katherine I. Riback, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The decision of the federal agency committee which administers the Federal Agency Prequalification Procedure for underground heat distribution (UHD) systems to require protester to pass a longer boiling test than the one required by the Procedure is reasonable where protester's polyester resin UHD system has twice previously failed.

DECISION

Nova Group, Inc. protests the award of any contract under invitation for bids (IFB) No. DACA01-91-B-0140, issued by the Department of the Army for an underground steam distribution system at Redstone Arsenal, Alabama. Nova, a prime contractor on underground heat distribution (UHD) systems projects, contends that the government has treated it unfairly by imposing stricter requirements upon its UHD system than upon others which are composed of the same material. This solicitation has been postponed pending our resolution of Nova's protest, and no bids have been received.

The acceptability of UHD systems is determined according to the performance standards contained in the Federal Agency Prequalification Procedure. The Prequalification Procedure is administered by the Federal Agency UHD Systems Committee which is comprised of representatives of the Army, Navy, Air Force and the Department of Veterans Affairs. The Committee issues a letter of acceptability to a supplier whose system satisfies the prequalification criteria which entitles that supplier to furnish its system on projects undertaken by the participating agencies. The Prequalification Procedure does not specify designs or materials to be used in the UHD systems; rather, it requires that systems

053118/145465

"be designed to resist water infiltration and damage, mechanical and structural damage, corrosion and other causes of deterioration." Once a system has been prequalified, the system's specifications are incorporated in the supplier's approved brochure. This brochure, in effect, becomes the UHD system design specification for any project on which the supplier is selected. See PhilCon Corp., VB-206905 et al., Mar. 29, 1983, 83-1 CPD ¶ 319.

In 1980, Nova was issued a letter of acceptability for a fiberglass conduit system.¹ This UHD system used fiberglass reinforced plastic pipes that were required to pass a 48-hour heat exposure test. In 1985, Nova acquired another letter of acceptability for a newer polyester resin filament wound system it had developed. This UHD system passed a 96-hour boiling test required by the Prequalification Procedure. This polyester resin system has been widely installed by Nova across the United States and is the subject of the protest.

During the fall of 1986, it was discovered that water had gone through the vent of a Nova UHD polyester resin system installed at Chanute Air Force Base, Illinois, entered a conduit and boiled for an indeterminate period of time. The casing of the Nova UHD system disintegrated and it experienced a wholesale failure.

Around the time of the failure of the Nova polyester system at Chanute, another Nova system failed after water entered the conduit and boiled at the Naval Submarine Base, Kings Bay, Georgia.

Following the failure of the Nova polyester resin UHD system at Chanute, the Committee agreed not to rescind Nova's letter of acceptability based on the firm's written confirmation not to supply the polyester resin UHD system and to submit an alternate design for approval. After extensive testing, Nova developed a conduit system that used a vinylester resin and which contained some design changes.² The Committee and Nova agreed to conduct a long-term boiling test--50 days--of the new vinylester conduit system and of the same polyester resin system that failed at Chanute. The vinylester conduit system passed the boiling test; Nova's polyester resin system failed. On June 8, 1989, Nova received a letter of acceptability for its vinylester resin

¹A conduit is a rigid or semirigid structure that surrounds and protects the carrier pipe and its insulation.

²According to Nova, the cost of the vinylester resin UHD system is roughly twice the cost of the polyester UHD system.

UHD system. At the same time, the Committee canceled the letter of acceptability for Nova's polyester resin system.

In August 1989, the Committee awarded Sigma Piping Company, Inc. a letter of acceptability for a polyester resin UHD system. Sigma's system was required to pass the 96-hour boiling test set forth in the Prequalification Procedure. It was not subjected to the longer-term boiling test which Nova had to pass after its system failures.

The IFB for the work at Redstone requires the UHD system supplier to possess a letter of acceptability issued by the Committee, and states that design, manufacture, fabrication, installation and testing of the system shall be in accordance with the approved brochure. Nova contends that this provision discriminates against it because its approved brochure requires the use of vinylester resin, while the approved brochure of at least one other manufacturer allows the use of less expensive polyester resin. Nova argues that no polyester resin UHD is capable of withstanding long-term boiling and that to the extent the Prequalification Procedure does not impose at least a 50-day boiling test upon any system based upon the use of polyester resin the Procedure does not accurately set forth the government's minimum needs.

Under the UHD Prequalification Procedure, the Committee must hold all suppliers to the same general standards in the prequalification process. We will question the technical judgments involved in interpreting and applying the Prequalification Procedure only if we find those judgments to be unreasonable or unfair. See PhilCon Corp., supra. For the reasons cited below, we find that the Committee's actions concerning the Nova system were both reasonable and fair.

First, we see nothing improper in the Committee's treatment of Nova in connection with the system failures. There is no disagreement that there were two significant failures of Nova's polyester resin system, or that these two failures were the only significant ones concerning systems made of this material. While there seems to be some dispute as to how or why water entered the systems, it is clear that the damage to the systems was caused by the impact of long-term boiling water on the polyester resin. It is also undisputed that under the Prequalification Procedure, the Committee may withdraw its approval of a system if that system experiences a technical failure. Here, the Committee exercised its technical judgment and, because of the failures, withdrew its approval of Nova's polyester resin system and would not restore approval of the system unless it could pass a long-term boiling test. The Nova polyester resin system could not pass, so the Committee permanently withdrew its approval of Nova's system and granted approval of the firm's current

vinylester system which did pass the long-term boiling test. While Nova believes that the water entered its system due to the fault of the government in each instance, it does not question the Committee's judgment in withdrawing its approval of the firm's polyester resin system or its approval of the firm's vinylester system or the use of the long-term boiling test in this process. We therefore see nothing in the record upon which to object to the Committee's actions in this regard.

With respect to the treatment of other suppliers offering UHD systems made of the same polyester resin material that failed in Nova's system, the Committee states that Nova was subjected to the long-term boiling requirement only because its particular system failed twice while there have been no similar failures involving other polyester resin systems. The Committee points out that the performance of UHD systems is influenced by its design as well as by the materials of which it is made and that it is possible that a type of material can be acceptable in one kind of system but not perform satisfactorily in another system design. Other manufacturers' polyester resin systems have significantly different designs than Nova's system. The contracting agency states that neither the solicitation nor the Prequalification Procedure requires the use of a particular design or of any particular material and that Nova's choice of the expensive vinylester material, as opposed to a different material or a different design, to cure the failures was purely its own.


Nova, on the other hand, states that it has conducted extensive tests regarding the resistance of polyester resin to long-term boiling and has concluded that the material in any system design will fail if subjected to boiling water for 50 days. It therefore states that the 96-hour test standard currently in the Prequalification Procedure is inadequate to guard against the failure of systems made of polyester resin and argues that the standard should be changed, and that the currently approved polyester resin system of Sigma should not be used unless it too can pass a long-term boiling test.

While we appreciate Nova's concern regarding the ability of any system made of polyester resin to withstand long-term boiling, the fact remains that only its system has failed and that the design of the Sigma polyester resin system is significantly different from Nova's system. Although the protester argues that the design differences are insignificant as far as their impact upon the system's resistance to boiling water is concerned, these assertions do not provide

a basis for us to object to the technical judgment of the Committee that it does not, at this time, have sufficient grounds to conclude that the Sigma system will experience a similar failure.³

Accordingly, we think it was reasonable for the Committee to discriminate between differently designed systems made of the same material where one has experienced failures and the other has not. Further, while the standards in the Prequalification Procedure contain only the 96-hour boiling test, we think that the Committee has the authority to impose a more stringent standard upon a supplier where, as here, its particular system has twice experienced failure.

The protest is denied.


for James F. Hinchman
General Counsel

³The Committee is concerned about the general problem of the effect of long-term boiling on UHD systems, and is currently developing the final draft of a long-term boiling test procedure that all UHD systems manufacturers must pass. We trust that this process will be soon completed.